

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

NUMBER 2005R00257

UNITED STATES OF AMERICA

vs

DOMINICK BAILEY

MOTION FOR DOWNWARD DEPARTURE

Now comes the counsel for Defendant in the above entitled matter and moves this Honorable Court grant Defendant a downward departure to the advisory guidelines sentence. The Defendant seeks probation given his significant mental health history. It is his desire to be cared for by the Mental Health Services of Dartmouth Hitchcock Hospital where he has received care prior to this incident.

The defendant has a significant history of psychiatric illness and treatment and is required to consume large doses of anti-psychotic medications. This condition was precipitated by a severe beating the defendant sustained to his head in 1992. The Defendant was beaten and left unconscious in a ditch. This beating resulted in a skull fracture as well as fractures of his cheek and fingers. The Defendant as a result of that beating suffered permanent brain damage. His entire personality changed and he has since suffered from anxiety and depression. He has had hallucinations. He has made suicide attempts and threats.

During the pendency of this matter, he has been hospitalized for competency evaluations at both the Federal Medical Center in Lexington, Kentucky and also at Devens, Massachusetts.

During the Kentucky hospitalization the defendant witnessed and went to the aid of another detainee who had attempted suicide by slashing his throat. The Defendant sought help to

save the life of the other detainee.

To the Defendant, the world in general and his current place of detention are fearful places. The Defendant is fearful of being killed or injured. The Defendant suffers constantly and finds little or no peace while being held.

The Defendant seeks a departure under U.S.S.G. 5K2.13 for diminished capacity for the following reasons: (1) the defendant as a result of the head trauma and subsequent mental health problems clearly was suffering from significantly reduced mental capacity and (2) as a result of that significantly reduced capacity the defendant engaged in the offense under the direction of individuals who manipulated him to commit the offense by encouraging him to trade the firearms and ammunition for a truck transmission.

During the course of his detention at Strafford County, the defendant has witnessed a suicide and he himself has expressed suicidal ideation. The Defendant has suffered immensely from anxiety and mental health symptoms requiring on several occasions the raising of the dosage of his medications.

Due to the severity of the Defendant's mental health issues, the Defendant seeks a downward departure pursuant to U.S.G. 3553 (a)(1). The Defendant has during multiple hospitalizations been diagnosed with many mental illnesses including but not limited to the following: Post Traumatic Stress Disorder, Major Depression, Dementia, Cognitive Disorder, head trauma, anxiety, hypervigilance, Adjustment Disorder, Bipolar Disorder, personality change due to Head Trauma and Malingering. The various clinicians at various times have all agreed that the defendant suffers from significant mental illness. Therefore: the Defendant seeks a downward departure pursuant to U.S.G. 3553 (a)(1).

By his attorney,

1/24/07

/s/ Sandra Bloomenthal

Sandra Bloomenthal
39 Academy Street
Unit 1
Tilton, NH 03276
(603) 286- 9225

CERTIFICATE OF SERVICE

I, Sandra Bloomenthal, have today served a copy of the above Motion to Deviate From Advisory Guidelines electronically to Debra Walsh, AUSA.

1/23/07

/s/ Sandra Bloomenthal

Sandra Bloomenthal